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Supreme Court, U.S.
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No.

In the Supreme Court of the United States

October Term, 1987

CLARENCE ROBERTS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

PETITION FOR WRIT OF CERTIORARI To the Court of Appeals, Eighth Appellate District Cuyahoga County, Ohio

JOHN R. CLIMACO, *Counsel of Record*
JACK D. MAISTROS

CLIMACO, CLIMACO, SEMINATORE,
LEFKOWITZ & GAROFOLI Co., L.P.A.

9th Floor, The Halle Building
1228 Euclid Avenue
Cleveland, Ohio 44115-1802
216/621-8484

Counsel for Petitioner



QUESTION PRESENTED

Whether a juvenile court's waiver of jurisdiction over a fifteen year old charged with the offense of aggravated murder satisfies the due process clause of the Fourteenth Amendment and this court's decision in *Kent v. United States*, 383 U.S. 541 (1986) where the juvenile court does not specify the reasons motivating the waiver?

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CLARENCE ROBERTS,
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STATE OF OHIO,
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**PETITION FOR WRIT OF CERTIORARI
To the Court of Appeals, Eighth Appellate District
Cuyahoga County, Ohio**

Petitioner, Clarence Roberts, prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio rendered on June 18, 1987, upholding Petitioner's conviction and sentence for murder and aggravated robbery.

OPINIONS BELOW

On September 3, 1985, Petitioner, Clarence Roberts, fifteen years old at the time, was named in a delinquency complaint filed in the Juvenile Division, Court of Common Pleas, Cuyahoga County, Ohio. The complaint alleged that on or about August 25, 1985, Petitioner committed the offenses of Aggravated Murder (Ohio Rev. Code §2903.01), Aggravated Robbery (Ohio Rev. Code §2911.01

(A)(1)) and Felonious Assault (Ohio Rev. Code §2903.11 (A)(2)). On September 26, 1985, the juvenile court determined that there was probable cause to believe that Petitioner committed the alleged acts and that such acts would be felonies if committed by an adult.

On October 18, 1985, the juvenile court conducted an amenability hearing. At the conclusion of the hearing the juvenile court bound Petitioner over to the General Division of the Court of Common Pleas, Cuyahoga County, Ohio to be tried as an adult. (The Entry of the Juvenile Court is unreported and is reprinted at page A11 of the Appendix.)

On November 14, 1985, the Cuyahoga County grand jury indicted Petitioner for: Aggravated Murder, with a Gun Specification and a Felony Murder Specification; Aggravated Robbery, with a Gun Specification; and, Receiving Stolen Property. On March 20, 1986, Petitioner plead guilty to a reduced charge of Murder, with a Gun Specification and Aggravated Robbery, with a Gun Specification. The charge of Receiving Stolen Property was *nolled*. On June 3, 1986, the Cuyahoga County Court of Common Pleas sentenced Petitioner to a term of fifteen years to life on the Murder charge, ten years to fifteen years on the Aggravated Robbery charge and three years on the Gun Specification. (The entry of the Court of Common Pleas is unreported and is reprinted at page A9 of the Appendix.)

By Journal Entry and Opinion dated June 18, 1987, the Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio, affirmed Petitioner's conviction. (The Journal Entry and Opinion of the Court of Appeals is unreported and is reprinted at page A2 of the Appendix.) On November 4, 1987, the Ohio Supreme Court

dismissed Petitioner's motion for leave to appeal. (The Entry of the Ohio Supreme Court is unreported and is reprinted at page A1 of the Appendix.)

JURISDICTION

The Journal Entry and Opinion of the Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio was entered on June 18, 1987. A timely motion for leave to appeal was denied by the Ohio Supreme Court on November 4, 1987. The jurisdiction of this Court is involved pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Section One of the Fourteenth Amendment of the Constitution of the United States provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2151.26 of the Ohio Revised Code provides:

§ 2151.26 Relinquishment of jurisdiction for purpose of criminal prosecution.

(A) After a complaint has been filed alleging that a child is delinquent by reason of having committed an act that would constitute a felony if committed by an adult, the court at a hearing may trans-

fer the case for criminal prosecution to the appropriate court having jurisdiction of the offense, after making the following determinations:

(1) The child was fifteen or more years of age at the time of the conduct charged;

(2) There is probable cause to believe that the child committed the act alleged;

(3) After an investigation, including a mental and physical examination of the child made by a public or private agency, or a person qualified to make the examination, that there are reasonable grounds to believe that:

(a) He is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children;

(b) The safety of the community may require that he be placed under legal restraint, including, if necessary, for the period extending beyond his majority.

(B) The court, when determining whether to transfer a case pursuant to division (A) of this section, shall determine if the victim of the delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the commission of the act. Regardless of whether or not the child knew the age of the victim, the fact that the victim was sixty-five years of age or older or permanently and totally disabled shall be considered by the court in favor of transfer, but shall not control the decision of the court.

(C) The child may waive the examination if the court finds the waiver competently and intelligently made. Refusal to submit to a mental and physical examination by the child constitutes waiver of the examination.

(D) Notice in writing of the time, place, and purpose of such hearing shall be given to the child's parents, guardian, or other custodian and his counsel at least three days prior to the hearing.

(E) No child, either before or after reaching eighteen years of age, shall be prosecuted as an adult for an offense committed prior to becoming eighteen, unless the child has been transferred as provided in this section. Any prosecution that is had in a criminal court on the mistaken belief that the child was over eighteen years of age at the time of the commission of the offense shall be deemed a nullity, and the child shall not be considered to have been in jeopardy on the offense.

(F) Upon such transfer, the juvenile court shall state the reasons for the transfer and order the child to enter into a recognizance with good and sufficient surety for his appearance before the appropriate court for any disposition that the court is authorized to make for a like act committed by an adult. The transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint.

(G) Any child whose case is transferred for criminal prosecution pursuant to this section and who is subsequently convicted in that case shall thereafter be prosecuted as an adult in the appropriate

court for any future act that he is alleged to have committed that if committed by an adult would constitute the offense of murder or aggravated murder, or would constitute an aggravated felony of the first or second degree or a felony of the first or second degree.

Rule 30 of the Ohio Rules of Juvenile Procedure provides:

RULE 30. Relinquishment of jurisdiction for purposes of criminal prosecution

(A) Preliminary hearing. In any proceeding where the court may transfer a child fifteen or more years of age for prosecution as an adult, the court shall hold a preliminary hearing to determine if there is probable cause to believe that the child committed the act alleged and that such act would be a felony if committed by an adult. Such hearing may be upon motion of the court, the prosecuting attorney or the child.

(B) Investigation. If the court finds probable cause, it shall continue the proceedings for full investigation. Such investigation shall include a mental and physical examination of the child by the Ohio Youth Commission, a public or private agency, or by a person qualified to make such examination. When the investigation is completed, a hearing shall be held to determine whether to transfer jurisdiction. Written notice of the time, place and nature of the hearing shall be given to the parties at least three days prior to the hearing.

(C) Prerequisites to transfer. The proceedings may be transferred if the court finds there are reasonable grounds to believe:

(1) The child is not amenable to care or rehabilitation in any facility designed for the care, supervision and rehabilitation of delinquent children; and

(2) The safety of the community may require that the child be placed under legal restraint for a period extending beyond the child's majority.

(D) Retention of jurisdiction. If the court retains jurisdiction, it shall set the proceedings for hearing on the merits.

(E) Determination of amenability to rehabilitation. In determining whether the child is amenable to the treatment or rehabilitative processes available to the juvenile court, the court shall consider:

- (1) The child's age and his mental and physical health;
- (2) The child's prior juvenile record;
- (3) Efforts previously made to treat or rehabilitate the child;
- (4) The child's family environment; and
- (5) School record.

(F) Waiver of mental and physical examination. The child may waive the mental and physical examination required under subdivision (B). Refusal to submit to a mental and physical examination or any part thereof by the child shall constitute waiver thereof.

(G) Order of transfer. The order of transfer shall state the reasons therefor.

(H) Release of transferred child. The juvenile court shall set terms and conditions for the release of the transferred child in accordance with Criminal Rule 46.

STATEMENT OF THE CASE

A. Juvenile Court Proceedings

1. The probable cause hearing

On August 25, 1985, at approximately 3:00 a.m. in the morning, John Griffin was shot and killed in the area of East 125th and Superior Avenue in Cleveland, Ohio (Tr. 48).¹ Petitioner and two other individuals, Ronald Pinkney and Darryl Scott, were charged with Griffin's murder.

At the probable cause hearing one of the state's witnesses testified that he saw two men in the area at the approximate time of the shooting. The witness could not identify either man (Tr. 24-29). Another of the state's witnesses, Ronald Lee Davis, testified that Petitioner had pulled a gun on him during the afternoon of August 25, 1985, and that he grabbed the gun and turned it over to the police (Tr. 3-9). Testimony was subsequently presented in an effort to establish that the same gun was used in the murder of Griffin (Tr. 49).

1. "Tr." refers to the transcript of the September 26, 1985 probable cause hearing held in the Juvenile Division, Court of Common Pleas, Cuyahoga County, Ohio.

The state's only other witness, detective Robert Bayerl, testified that Petitioner had told him that he and Ronald Pinkney found the gun on August 23, 1985, that he gave the gun to Pinkney and Darryl Scott on Saturday, August 24, 1985, and that he did not see Pinkney or Scott until the following day, August 25, 1985. According to the detective, Petitioner denied any involvement in the murder of Griffin and Pinkney denied any knowledge of the gun and any involvement with Petitioner (Tr. 50-55).

Pinkney subsequently admitted being with Petitioner and Scott during the early morning hours of August 25, 1985. Pinkney also stated that he had seen Petitioner and Scott driving a car that matched the description of Griffin's car and that Scott bragged about killing someone. Finally, detective Bayerl testified that an individual by the name of William Dozier told him that Petitioner and Scott stated that they had shot someone (Tr. 56, 64).

2. The amenability hearing

Petitioner's probation officer, Mr. Pokorny, reported the results of Petitioner's physical, psychological and psychiatric evaluations. Petitioner was described as "physically normal" (Tr.A. 3).² Izadore Helfand, Ph.D., conducted the psychological examination. Intelligence tests indicated that Petitioner has a verbal I.Q. of 85, a performance I.Q. of 92, a full-scale I.Q. of 89 and a 7.8 grade reading level. Helfand determined that Petitioner is functioning in the low-average to dull-normal intelligence level and described Petitioner as a "social, more independent, somewhat impulsive youngster." Helfand concluded that "[t]he record would not contraindicate

2. "Tr.A." refers to the transcript of the October 18, 1985, amenability hearing.

[Petitioner's] ability to stand trial as an adult." (Tr.A. 4-6 and see Helfand's written report).

Dr. Edwin Roth conducted the psychiatric examination. Roth described Petitioner as a "very immature, frightened, somewhat traumatized youngster." Dr. Roth suggested that an important event in Petitioners' life occurred when he was approximately thirteen (13) years of age. His natural father drove him, his brother and his mother to a park and threatened to shoot both his mother and his brother. Dr. Roth noted:

[T]he impression this youngster conveys at this time is not of a hostile, aggressive, dangerous, anti-social character, but of a more anxious, neurotic, youngster who has been quite overwhelmed, who is passive and easily led because of his disturbances, but who indeed may have sufficient strength of character to be responsive to therapy in a proper setting for him. (See, Dr. Roth's written report.)

Dr. Roth was of the opinion that Petitioner presented himself as an "immature adolescent, indeed more immature than his chronological age, and possibly not yet fixed in a rigid, psychopathic character structure". Dr. Roth noted:

It is quite possible that [Petitioner] may be a candidate for rehabilitation through a sophisticated, therapeutic program, but it is difficult to evaluate that adequately in the court circumstances. (See, Dr. Roth's written report.)

Dr. Roth felt that consideration should be given to hospitalization in a sophisticated, psychiatric in-patient setting for a period of three to six weeks. Dr. Roth concluded by noting that if Petitioner "indeed had been

the killer, then I would want to reconsider my conclusions". (See, Dr. Roth's written report.)

Mr. Pokorny advised the juvenile court that his first involvement with Petitioner occurred on July 25, 1985 (Tr.A. 8). On July 25, 1985, five days before his fifteenth (15) birthday, Petitioner was found to be delinquent on two counts of Criminal Mischief, misdemeanors of the third degree; one count of Petty Theft, a misdemeanor of the first degree; two counts of Breaking and Entering, felonies of the fourth degree; one count of Theft, a felony of the fourth degree; and, one count of Possession of Criminal Tools, a felony of the fourth degree. Petitioner was committed to the Ohio Department of Youth Services, the commitment order was stayed, and Petitioner was placed on intense probation.

Mr. Pokorny advised the juvenile court that Petitioner does not see his natural father and has no desire to see his natural father. Although Mr. Pokorny suggested that Petitioner often argues with his stepfather, he did admit that Petitioner can talk to his stepfather. Petitioner told Mr. Pokorny that his relationship with his mother was pretty good and although he could not really relate to her, he usually did not argue with her. Although Petitioner's older brother is not in the home, he still tries to keep in contact with him (Tr.A. 11-12).

Mr. Pokorny stated that although Petitioner did not adhere to the curfew established by both himself and Petitioner's parents, he did return home at night. Mr. Pokorny described Petitioner's school adjustment as "poor". Although Mr. Pokorny described Petitioner's view of probation at the outset as "resistive", Mr. Pokorny felt Petitioner's attitude was improving. In fact, the

Cuyahoga County Juvenile Detention Center Adjustment Report states that as far as staff relationships were concerned Petitioner accepted advice and directives well. The Report concluded by noting: "considering all, we feel that Clarence [Petitioner] has functioned in an acceptable manner during his stay in detention." (See, Report dated September 25, 1985.)

After hearing the presentation of Petitioner's probation officer, and the arguments of the prosecutor and defense counsel, the juvenile court reiterated the evidence presented at the *probable cause* hearing and stated:

If not involved, then of course he should be found not guilty and released from custody. He denied original involvement. He has that right, of course, and to be found guilty beyond a reasonable doubt (Tr.A. 25).

The juvenile court concluded by stating that there were reasonable grounds to believe that Petitioner was not amenable to care or rehabilitation in any facility designed for the care and supervision or rehabilitation of delinquent children and that the safety of the community may require that Petitioner be placed under legal restraint, including, if necessary, for the period extending beyond his majority (Tr.A. 25).

B. The Court of Appeals' Decision

The Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio, determined that the record contained "sufficient, credible evidence on each factor" listed in Rule 30(e) of the Ohio Rules of Juvenile Procedure to support the juvenile court's decision to bind Petitioner over to be tried as an adult. And although the court

noted that its previous decisions, as well as decisions of other Ohio appellate courts, required the juvenile court to state the reasons for its decision to relinquish jurisdiction, the court held that the Ohio Supreme Court's decision in *State v. Douglas*, 20 Ohio St. 3d 34, 485 N.E.2d 711 (1985), dictates that juvenile courts need not specify such reasons as long as the record contains sufficient credible evidence supporting the juvenile court's decision.

REASONS FOR GRANTING THE WRIT

A JUVENILE IS DEPRIVED OF DUE PROCESS OF LAW AND MEANINGFUL APPELLATE REVIEW WHERE THE JUVENILE COURT FAILS TO SET FORTH THE FACTUAL BASIS FOR ITS DECISION TO RELINQUISH JURISDICTION OVER THE JUVENILE TO THE COURT OF COMMON PLEAS.

At the conclusion of the amenability hearing the juvenile court simply parroted the language of Rule 30 of the Ohio Rules of Juvenile Procedure in ruling that Petitioner was not amenable to treatment or rehabilitation in the Ohio juvenile system and that he should be tried as an adult. The juvenile court did not specify the factual basis for its decision.

Although neither Ohio Rev. Code §2151.26 nor Rule 30 of the Ohio Rules of Juvenile Procedure require the juvenile court to make written findings of fact as to its reasons for relinquishing jurisdiction, the juvenile court must nevertheless sufficiently state the reasons for its decision in order to provide the juvenile with meaningful appellate review. *Kent v. United States*, 383 U.S. 541 (1966).

In *Kent v. United States*, this Court, although recognizing the considerable discretion granted to the juvenile court in determining whether or not to relinquish jurisdiction, noted that such discretion "does not confer upon the Juvenile Court a license for arbitrary procedure." *Id.* 383 U.S. at 553. The Court went on to note:

It is clear beyond dispute that the waiver of jurisdiction is a 'critically important' action determining vitally important statutory rights of the juvenile. *Id.* 383 U.S. at 555.

The Court then addressed the issue of the juvenile court's failure to set forth the reasons for its decision to relinquish jurisdiction stating "[m]eaningful review requires that the reviewing court should review." *Id.* 383 U.S. at 561. Specifically, the Court held that meaningful appellate review mandates that the appellate court "must have before it a statement of the reasons motivating the waiver including, of course, a statement of the relevant facts." *Id.* 383 at 561. Ohio courts have totally ignored this Court's decision in *Kent v. United States*.

In *State v. Douglas*, 20 Ohio St. 3d 34, 485 N.E.2d 711 (1985) the Ohio Supreme Court held that neither Ohio Rev. Code §2151.26 nor Rule 30 of the Ohio Rules of Juvenile Procedure require the Juvenile Court to make written findings as to the five factors listed in Rule 30(E) of the Ohio Rules of Juvenile Procedure.³ In the instant

3. Rule 30(E) of the Ohio Rules of Juvenile Procedure provides:

In determining whether the child is amenable to the treatment or rehabilitation processes available to the Juvenile Court the court shall consider: 1) The child's age and his mental and physical health; 2) The child's prior juvenile record; 3) Efforts previously made to treat or rehabilitate the child; 4) The child's family environment; and 5) School record.

case the Court of Appeals relied upon *State v. Douglas* for the proposition that in Ohio a juvenile court need not, either orally or in writing, specify the basis for its decision to relinquish jurisdiction.

Prior to the Ohio Supreme Court's decision in *State v. Douglas*, several Ohio appellate courts had held that Rule 30(G) of the Ohio Rules of Juvenile Procedure, and meaningful appellate review, dictate that the juvenile court specify the reasons for its decision to relinquish jurisdiction over a juvenile to the court of common pleas.⁴ In the instant case, the court of appeals specifically noted such decisions, but determined that the Ohio Supreme Court's decision in *State v. Douglas* was dispositive of the issue.

As a result of the Ohio Supreme Court's decision in *State v. Douglas* and subsequent interpretations of that decision it does not matter whether the juvenile court relinquished jurisdiction because the juvenile was a poor student or because the juvenile didn't get along with his parents. In fact, the juvenile court could relinquish jurisdiction simply because it believed the juvenile to be guilty of the charged offense—a factor that apparently influenced the juvenile court in the instant case.

Petitioner was fifteen years and twenty-five days old at the time of the offense for which he eventually received a sentence of eighteen years to life. Unfortunately, there is no way to determine the basis for the juvenile court's decision to relinquish jurisdiction.

The psychologist's report before the juvenile court did not address the issue of his amenability to rehabilita-

4. Rule 30(G) of the Ohio Rules of Juvenile Procedure provides: "The order of transfer shall state the reason therefor."

tion. It simply provided that: "[t]he record would not contraindicate [Petitioner's] ability to stand trial as an adult." The psychiatrist determined that: "it is quite possible that [Petitioner] may be a candidate for rehabilitation through a sophisticated therapeutic program, but it is difficult to evaluate that adequately in the court circumstances." Moreover, Petitioner's first contact with the juvenile system occurred just one month prior to the incident for which he stands convicted.

In Ohio the existence of such mitigating facts is irrelevant. As long as the record contains evidence on each of the factors set forth in Rule 30(E) of the Ohio Rules of Juvenile Procedure the juvenile court's decision to relinquish jurisdiction must stand. Moreover, because the juvenile court is not required to specify the factual basis for its decision to relinquish jurisdiction the juvenile, defense counsel and appellate courts will never know if the juvenile court ignored relevant facts, or relied upon irrelevant facts, in determining whether to relinquish jurisdiction. Such a result is directly contrary to this Court's decision in *United States v. Kent*, deprives juveniles of meaningful appellate review, and must be addressed by this Court.

CONCLUSION

Wherefore, Petitioner respectfully requests this Court to issue a Writ of Certiorari to the Court of Appeals, Eighth Appellate District, Cuyahoga County, Ohio, to review the final judgment rendered by that court on June 18, 1987.

Respectfully submitted,

JOHN R. CLIMACO, *Counsel of Record*

JACK D. MAISTROS

CLIMACO, CLIMACO, SEMINATORE,

LEFKOWITZ & GAROFOLI Co., L.P.A.

9th Floor, The Halle Building

1228 Euclid Avenue

Cleveland, Ohio 44115-1802

216/621-8484

Counsel for Petitioner



APPENDIX

**ORDER OF THE SUPREME COURT OF OHIO
OVERRULING MOTION TO APPEAL**

(Dated November 4, 1987)

Case No. 87-1370

THE SUPREME COURT OF OHIO
COLUMBUS

STATE OF OHIO,
Appellee,

v.

CLARENCE ROBERTS,
Appellant.

ENTRY

Upon consideration of the motion for leave to appeal from the Court of Appeals for Cuyahoga County, and the claimed appeal as of right from said Court, it is ordered by the Court that said motion is overruled and the appeal is dismissed sua sponte for the reason that no substantial constitutional question exists therein.

COSTS:

Motion Fee, \$20.00, paid by Michael L. Climaco.

/s/ THOMAS J. MOYER
Chief Justice

**JOURNAL ENTRY AND OPINION OF THE COURT
OF APPEALS, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY, OHIO**

(Dated June 18, 1987)

No. 52288

COURT OF APPEALS OF OHIO
EIGHTH DISTRICT, COUNTY OF CUYAHOGA

STATE OF OHIO,
Plaintiff-Appellee,

vs.

CLARENCE ROBERTS,
Defendant-Appellant.

JOURNAL ENTRY and OPINION

MARKUS, C.J.:

The juvenile defendant appeals his convictions as an adult, on guilty pleas to murder and aggravated robbery with a penalty enhancing specification for possessing a firearm. He argues that the juvenile court (a) abused its discretion by transferring him for trial as an adult, and (b) denied him due process by failing to state the factual basis for that action. We affirm the trial court's judgment.

I

A delinquency complaint charged that this fifteen-year-old juvenile used a firearm to commit aggravated murder, aggravated robbery, and felonious assault. Pur-

suant to Juv. R. 30, the state moved the juvenile court to transfer him to the general division for trial on those charges as an adult. After an evidentiary hearing, the juvenile court found probable cause to believe that he committed those offenses. It then ordered evaluative mental and physical examinations, before determining the juvenile's amenability to care or rehabilitation in facilities for delinquent children.

At the amenability hearing, the juvenile's probation officer recounted the results of those examinations and the juvenile's response to supervision after prior offenses. The juvenile was physically normal, with a full-scale I.Q. of 89 and an eighth grade reading ability. The examining psychologist concluded that he functioned at a low average to dull normal intelligence level. The examining psychiatrist concluded that he might be responsive to rehabilitative therapy, unless he had in fact committed the alleged offenses.

Within the preceding year, the court had adjudicated him delinquent and placed him on intensive probation for multiple offenses. They included two counts of criminal mischief, misdemeanor theft, two counts of breaking and entering, felony theft, possession of criminal tools, unauthorized use of a motor vehicle, and receiving stolen property. His probation officer testified that he resisted probation supervision, violated his curfew by remaining out till 3:00 a.m., and smoked marijuana almost daily.

The probation officer further stated that the juvenile experimented with amphetamines and cocaine, and drank alcoholic beverages whenever they were available. He had a poor school record, marked by frequent truancy and course failures. Although his relationship with his

mother and step-father was adequate, his step-father had a drinking problem, and neither parent could enforce his curfew.

At the end of the hearing, the court entered the following order:

"The Court further finds after full investigation, including a physical, psychological, and psychiatric examination, made by the Psychiatric Clinic of this Court, that there are reasonable grounds to believe that the child is not amenable to the care or rehabilitation in any facility designed for the care, supervision and rehabilitation of delinquent children, and that the safety of the community may require that he be placed under legal restraint including, if necessary, for the period extending beyond his majority. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that under the provisions of Section 2151.26 Ohio Revised Code and Rule 30 Ohio Rules of Juvenile Procedure, that the said child, Clarence Roberts, is bound over for further proceedings according to law."

Following the juvenile court's transfer order, the grand jury indicted the juvenile for (a) aggravated murder, with a felony murder specification and a penalty enhancing specification for possessing a firearm, (b) aggravated robbery, with a penalty enhancing specification for possessing a firearm, and (c) receiving stolen property. Pursuant to plea negotiations, he later pled guilty to murder as a lesser included offense of aggravated murder, aggravated robbery, and a penalty enhancing specification for possessing a firearm. The state then dismissed the remaining charges.

II

The Ohio Supreme Court's unanimous *per curiam* decision in *State v. Douglas* (1985), 20 Ohio St. 3d 34, controls our disposition of this juvenile's appeal. In *Douglas*, the Court said at 35-37:

"The issue presented in this appeal is whether the bind-over of appellee was properly accomplished in compliance with R.C. 2151.26 and Juv. R. 30. . . .

"R.C. 2151.26 and Juv. R. 30 set forth the procedure to be followed by a juvenile court in a bind-over situation. R.C. 2151.26(A) lists the determinations required to be made by the juvenile court before jurisdiction over a juvenile delinquent can be relinquished to the general division. Subdivision (3)(a) of this section requires, *inter alia*, a determination by the court that there are reasonable grounds to believe that: 'He [the child] is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children.'

"Juv. R. 30 amplifies the above requirement:

"(E) In determining whether the child is amenable to the treatment or rehabilitative processes available to the juvenile court, the court shall consider:

"(1) The child's age and his mental and physical health;

"(2) The child's prior juvenile record;

"(3) Efforts previously made to treat or rehabilitate the child;

“(4) The child’s family environment; and

“(5) School record.

“In this case, the juvenile court made all the determinations required by R.C. 2151.26(A). However, the journal entry relinquishing jurisdiction did not specifically address any of the five factors listed in Juv. R. 30(E). . . .

“Neither R.C. 2151.26 nor Juv. R. 30 requires the juvenile court to make written findings as to the five factors listed in Juv. R. 30(E). The rule simply requires the court to *consider* these factors in making its determination on the amenability issue. Although the better practice would be to address each factor, as long as sufficient credible evidence exists in the record before the court, the bind-over order should not be reversed in the absence of an abuse of discretion.

“In the case at bar, sufficient, credible evidence on each factor existed in the record before the juvenile court. Documents listing the age of appellee [a sixteen-year-old juvenile] and dealing with his physical and mental health were admitted into evidence at the bind-over proceeding. The lengthy prior juvenile record of appellee was also admitted at the proceeding. Rehabilitative efforts were the subject of testimony at the hearing, as was the family environment of appellee. Finally, appellee’s school record was discussed, albeit in a limited context.

“The purpose behind R.C. 2151.26 and Juv. R. 30 is the assessment of the probability of rehabilitating the child within the juvenile justice system. In *State*

v. Carmichael (1973), 35 Ohio St. 2d 1 [64 O.O.2d 1], the court recognized the wide latitude that must be given a juvenile court in these proceedings. . . .

"* * *

"Further, there is no requirement that each of the five factors be resolved against the juvenile.

"The record before the juvenile court in this case contains sufficient, credible evidence pertaining to each factor listed in Juv. R. 30(E). There has been no showing of an abuse of discretion on the part of the juvenile court.

"Accordingly, this court . . . reinstates the appellee's convictions." (All internal citations and footnotes omitted.)

III

As in the *Douglas* case, the record here contains "sufficient, credible evidence on each factor" listed in Juv. R. 30(E). We cannot say that the trial court abused its broad discretion by deciding that the juvenile system probably lacks the ability to rehabilitate this offender. Cf. *State v. Oviedo* (1982), 5 Ohio App. 3d 168, 170-171; *State v. Whiteside* (1982), 6 Ohio App. 3d 30, 35-36; see also *State v. Jenkins* (1984), 15 Ohio St. 3d 164, 222 (abuse of discretion defined).

Earlier decisions by this court and other Ohio appellate courts required the juvenile court to state its reasons for the transfer order, orally if not in writing. See, e.g., *State v. Cordero* (Apr. 18, 1985), Cuyahoga App. No. 48487, unreported; *State v. Newton* (Jun. 10, 1983), Fulton App. No. F-82-17, unreported. However, the

Douglas decision makes clear that such findings are not required for Ohio courts.

Hence, we overrule the juvenile's two assignments of error and affirm his convictions.

It is ordered that appellee recover of appellant its costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PRYATEL, J., and
PATTON, J., Concur.

/s/ RICHARD M. MARKUS
Chief Justice

**JOURNAL ENTRY OF THE COURT OF COMMON
PLEAS OF CUYAHOGA COUNTY, OHIO**

(Dated June 3, 1986)

No. CR 203057

IN THE COURT OF COMMON PLEAS

STATE OF OHIO

Plaintiff

vs.

CLARENCE ROBERTS

Defendant

INDICTMENT Aggr Murder w/specification, Aggr Robb
w/sspec, Receiving Stolen Property

JOURNAL ENTRY

The defendant herein having on a former day of Court, plead guilty to Murder w.gun spec, RC 2903.02, as charged in the first count of the amended indictment, and guilty of Aggravated Robbery w/spec, RC 2911.01, as charged in the second count, was this day brought into Court with his/her counsel present.

Thereupon, the Court inquired of the said defendant if he/she had anything to say why judgment should not be pronounced against him/her: and having nothing but what he/she had already said and showing no good and sufficient cause why judgment should not be pronounced:

It is therefore, ordered and adjudged by the Court that said defendant, be imprisoned and confined in the

Chillicothe Correctional Institute, Chillicothe, Ohio for a term of fifteen (15) years to LIFE in count one and for a term of ten (10) years to fifteen (15) years in count two, and on the gun specification for three (3) years prior to and consecutive to the substantive offenses of Murder and Aggravated Robbery and judgment for Court Costs.

Attorney Michael Climaco appointed to handle defendant's Appeal and all transcripts and record for the Appeal and Court expenses.

Credit time served.

/s/ FRED J. GUZZO
Judge

**JOURNAL ENTRY OF THE JUVENILE COURT
DIVISION, COMMON PLEAS COURT, CUYA-
HOGA COUNTY, OHIO**

(Dated October 18, 1985)

JOURNAL ENTRY - DELINQUENT, UNRULY

State of Ohio
County of Cuyahoga

In the Common Pleas Court
Juvenile Court Division

In the matter of Clarence Roberts, case number 8505344.

This matter came on for hearing this 18th day of October, 1985, before the Honorable John J. Toner upon the complaint of affiant as to child herein heretofore adjudged: delinquent.

The court found that notice requirements have been met, and that all necessary parties were this day present in court.

Whereupon, this matter came on for dispositional hearing, having received the appropriate report, it is, therefore, ordered that:

Child is committed to the legal care and custody of Ohio Department of Youth Services.

Child bound over in cause no. 8408151.

/s/ JOHN J. TONER
Judge

Date: 10-25-85

8
No. 87-1113

Supreme Court, U.S.
FILED

JAN 28 1988

JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

October Term, 1987

CLARENCE ROBERTS,
Petitioner,

vs.

STATE OF OHIO,
Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
OF APPEALS, EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO**

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

JOHN T. CORRIGAN, *Prosecuting Attorney*
of Cuyahoga County, Ohio

GEORGE J. SADD, *Counsel of Record*
Assistant Prosecuting Attorney

The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7730

Attorneys for Respondent

I.

COUNTER QUESTION OF LAW

Respondent submits that the questions presented by the record in this case are more properly stated as follows:

Whether the bindover of Petitioner was properly accomplished in compliance with Ohio law.

II.

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ON PETITION FOR WRIT OF CERTIORARI TO THE COURT
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CUYAHOGA COUNTY, OHIO

**BRIEF IN OPPOSITION TO PETITION
FOR A WRIT OF CERTIORARI**

OBJECTIONS TO JURISDICTION

There exists no substantial federal question involved which would require this Court to review the instant matter.

The questions herein presented were raised in the Ohio Court of Appeals of Cuyahoga County and the Supreme Court of Ohio.

The Ohio Court of Appeals, Eighth District, unanimously affirmed the Petitioner's convictions. Likewise, the Ohio Supreme Court overruled Petitioner's Motion For Leave To Appeal finding no substantial constitutional question.

The Ohio Courts decided this case in accordance with the statutes of the State of Ohio, the Constitution of the United States and the applicable decisions of this Court.

No substantial federal question is presented by the instant Petition for Certiorari.

HISTORY OF THE CASE

On September 3, 1985 Petitioner, age 15, was charged in a delinquency complaint with Aggravated Murder (Ohio Rev. Code 2903.01), Aggravated Robbery (Ohio Rev. Code 2911.01 (A)(1)) and Felonious Assault (Ohio Rev. Code 2903.11 (A)(2)).

The Respondent, pursuant to Ohio Law, requested that the Juvenile Court transfer the proceedings to the Common Pleas Court so the Petitioner could be tried as an adult.

The Juvenile Court, on September 26, 1985 determined that probable cause existed to believe that Petitioner committed the alleged acts and that such acts would be felonies if committed by an adult.

The Juvenile Court, on October 18, 1985 conducted an amenability hearing. At the conclusion of the hearing, the Juvenile Court bound Petitioner over to the General Division of the Court of Common Pleas, Cuyahoga County, to be tried as an adult.

Subsequently, the Grand Jury of Cuyahoga County, on November 14, 1985 indicted Petitioner for the following crimes: Aggravated Murder with a Gun Specification and a Felony Murder Specification; Aggravated Robbery, with a Gun Specification; and, a count of Receiving Stolen Property.

Petitioner, on March 20, 1986 pled guilty to murder, with a gun specification and aggravated robbery, with a gun specification.

The Court of Appeals, Eighth Judicial District unanimously affirmed Petitioner's conviction. The Ohio Supreme Court declined jurisdiction finding no substantial constitutional question presented for review.

STATEMENT OF FACTS

A delinquency complaint charged that Petitioner used a firearm to commit aggravated murder, aggravated robbery, and felonious assault. Pursuant to Juv. R. 30, the state moved the juvenile court to transfer him to the general division for trial on those charges as an adult. After an evidentiary hearing, the juvenile court found probable cause to believe that Petitioner committed those offenses. It then ordered evaluative mental and physical examinations, before determining the Petitioner's amenability to care or rehabilitation in facilities for delinquent children.

At the amenability hearing, the Petitioner's probation officer recounted the results of those examinations and the Petitioner's response to supervision after prior offenses. The Petitioner was physically normal, with a full-scale I.Q. of 89 and an eighth grade reading ability. The examining psychologist concluded that he functioned at a low average to dull normal intelligence level. The examining psychiatrist concluded that Petitioner might be responsive to rehabilitative therapy, unless he had in fact committed the alleged offenses.

Within the preceding year, the Court had adjudicated him delinquent and placed him on intensive probation for multiple offenses. They included two counts of criminal mischief, misdemeanor theft, two counts of breaking and entering, felony theft, possession of criminal tools, unauthorized use of a motor vehicle, and receiving stolen property. His probation officer testified that Petitioner resisted probation supervision, violated his curfew by remaining out till 3:00 a.m., and smoked marijuana almost daily.

The probation officer further stated that Petitioner experimented with amphetamines and cocaine, and drank alcoholic beverages whenever they were available. He

had a poor school record, marked by frequent truancy and course failures. Although his relationship with his mother and step-father was adequate, his step-father had a drinking problem, and neither parent could enforce his curfew.

At the end of the hearing, the Court entered the following order:

"The Court further finds after full investigation, including a physical, psychological, and psychiatric examination, made by the Psychiatric Clinic of this Court, that there are reasonable grounds to believe that the child is not amenable to the care or rehabilitation in any facility designed for the care, supervision and rehabilitation of delinquent children, and that the safety of the community may require that he be placed under legal restraint including, if necessary, for the period extending beyond his majority. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that under the provisions of Section 2151.26 Ohio Revised Code and Rule 30 Ohio Rules of Juvenile Procedure, that the said child, Clarence Roberts, is bound over for further proceedings according to law."

Following the juvenile court's transfer order, the grand jury indicted the Petitioner for (a) aggravated murder, with a felony murder specification and a penalty enhancing specification for possessing a firearm, (b) aggravated robbery, with a penalty enhancing specification for possessing a firearm, and (c) receiving stolen property. Pursuant to plea negotiations, Petitioner later pled guilty to murder as a lesser included offense or aggravated murder, aggravated robbery, and a penalty enhancing specification for possessing a firearm. The state then dismissed the remaining charges.

REASONS FOR DENYING THE WRIT

OHIO LAW DOES NOT REQUIRE THAT JUVENILE COURTS ISSUE WRITTEN FINDINGS ON A BINDOVER TO THE ADULT COURT. UNDER OHIO LAW, ALL THAT IS REQUIRED TO ACCOMPLISH A TRANSFER OF JURISDICTION IS THAT THE JUVENILE COURT JUDGE CONSIDER CERTAIN FACTORS IN MAKING ITS DETERMINATION. THE RECORD BELOW DOES NOT DEMONSTRATE ANY ABUSE OF DISCRETION ON THE PART OF THE JUVENILE COURT NOR ANY DENIAL OF DUE PROCESS TO PETITIONER WHEN THE JUVENILE COURT JUDGE FULLY CONSIDERED ALL NECESSARY FACTORS PRIOR TO THE BINDOVER.

Petitioner argues that he was deprived of due process of law when, on a bindover proceeding, the juvenile court failed to issue written findings on its decision to relinquish jurisdiction to the adult court.

The Ohio Supreme Court's unanimous *per curiam* decision in *State v. Douglas* (1985), 20 Ohio St. 3d 34, controls the disposition of Petitioner's argument. In *Douglas*, the Court said at 35-37:

"The issue presented in this appeal is whether the bind-over of appellee was properly accomplished in compliance with R.C. 2151.26 and Juv. R. 30. . . .

"R.C. 2151.26 and Juv. R. 30 set forth the procedure to be followed by a juvenile court in a bind-over situation. R.C. 2151.26(A) lists the determinations required to be made by the juvenile court before jurisdiction over a juvenile delinquent can be relinquished to the general division. Subdivision (3)(a) of this section requires, *inter alia*, a determination by the court that there are

reasonable grounds to believe that: 'He [the child] is not amenable to care or rehabilitation or further care or rehabilitation in any facility designed for the care, supervision, and rehabilitation of delinquent children.'

"Juv. R. 30 amplifies the above requirement:

"(E) In determining whether the child is amenable to the treatment or rehabilitative processes available to the juvenile court, the court shall consider:

"(1) The child's age and his mental and physical health;

"(2) The child's prior juvenile record;

"(3) Efforts previously made to treat or rehabilitate the child;

"(4) The child's family environment; and

"(5) School record.

"In this case, the juvenile court made all the determinations required by R.C. 2151.26(A). However, the journal entry relinquishing jurisdiction did not specifically address any of the five factors listed in Juv. R. 30(E). . . .

"Neither R.C. 2151.26 nor Juv. R. 30 requires the juvenile court to make written findings as to the five factors listed in Juv. R. 30(E). The rule simply requires the court to consider these factors in making its determination on the amenability issue. Although the better practice would be to address each factor, as long as sufficient credible evidence exists in the record before the court, the bind-over order should not be reversed in the absence of an abuse of discretion.

"In the case at bar, sufficient, credible evidence on each factor existed in the record before the juvenile court. Documents listing the age of appellee [a sixteen-year-old juvenile] and dealing with his

physical and mental health were admitted into evidence at the bind-over proceeding. The lengthy prior juvenile record of appellee was also admitted at the proceeding. Rehabilitative efforts were the subject of testimony at the hearing, as was the family environment of appellee. Finally, appellee's school record was discussed, albeit in a limited context.

"The purpose behind R.C. 2151.26 and Juv. R. 30 is the assessment of the probability of rehabilitating the child within the juvenile justice system. In *State v. Carmichael* (1973), 35 Ohio St. 2d 1 [64 O.O.2d 1], the court recognized the wide latitude that must be given a juvenile court in these proceedings. . . .

"* * *

"Further, there is no requirement that each of the five factors be resolved against the juvenile.

"The record before the juvenile court in this case contains sufficient, credible evidence pertaining to each factor listed in Juv. R. 30(E). There has been no showing of an abuse of discretion on the part of the juvenile court.

"Accordingly, this court . . . reinstates the appellee's convictions." (*All internal citations and footnotes omitted.*) (*Emphasis added.*)

As in the *Douglas* case, the record here contains "sufficient, credible evidence on each factor" listed in Juv. R. 30(E). The trial court did not abuse its broad discretion by deciding that the juvenile system probably lacks the ability to rehabilitate this offender. Cf. *State v. Oviedo* (1982), 5 Ohio App. 3d 168, 170-171; *State v. Whiteside* (1982), 6 Ohio App. 3d 30, 35-36; see also *State v. Jenkins* (1984), 15 Ohio St. 3d 164, 222 (abuse of discretion defined).

CONCLUSION

In conclusion, the respondent submits that the petition herein fails to present any federal question of constitutional dimension justifying review by the Court.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN J. CORRIGAN, *Prosecuting Attorney*
of Cuyahoga County, Ohio

GEORGE J. SADD, *Counsel of Record*
Assistant Prosecuting Attorney

The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7730

Attorneys for Respondent